

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

IN THE MATTER OF  
Offsite Operable Unit, Triple Site Superfund Site  
Sunnyvale, California

Philips Semiconductors, Inc.

Respondent

ADMINISTRATIVE SETTLEMENT AGREEMENT AND  
ORDER ON CONSENT FOR  
EVALUATION OF VAPOR INTRUSION TO INDOOR AIR AND CONDITIONAL  
EVALUATION AND IMPLEMENTATION OF MITIGATION MEASURES AT THE  
OFFSITE OPERABLE UNIT (OOU), TRIPLE SITE SUPERFUND SITE

U.S. EPA Region IX  
CERCLA Docket No. 2015-06

Proceeding under Sections 104, 107 and 122 of the Comprehensive Environmental Response,  
Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622.

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Philips Semiconductors Inc., formerly Signetics ("Philips"), henceforth referred to as "Respondent" and for the Site referred to as the "Triple Site" or "Site." The Settlement Agreement provides for the performance of an evaluation of vapor intrusion from the subsurface to indoor air and implementation of mitigation measures as provided herein in the Offsite Operable Unit of the Triple Site located in Sunnyvale, California, and the reimbursement of investigation and response costs incurred by EPA.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Settlement Agreement 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D, and further re-delegated to Region IX Superfund Branch Chief (now titled Assistant Director) level by the Regional Administrator of Region IX on September 25, 1997.

3. In accordance with Sections 104(b)(2) of CERCLA, 42 U.S.C. §9604(b)(2), EPA notified the State of California of the issuance of this Administrative Settlement Agreement and Order on Consent by providing the State a copy of the Settlement Agreement.

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact and conclusions of law and determinations of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

## **II. PARTIES BOUND**

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent is liable for carrying out all activities required by this Settlement Agreement.

7. Respondent shall ensure that the appropriate contractors, subcontractors, and representatives performing the Work receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

### III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of EPA and Respondent are: (a) for Respondent to conduct the work set forth in the Statement of Work (defined in Paragraph 11(q) and attached hereto as Appendix A) ("SOW") and (b) for EPA to recover Response Costs that it will incur with respect to its oversight of the Respondent's implementation of the SOW and with respect to this Settlement Agreement.

10. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall provide all appropriate and necessary information to assess Site conditions and evaluate alternatives to the extent necessary to select a response action that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures.

### IV. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday; or federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXVIII.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Response Costs" shall mean all response costs incurred on or after the Effective Date, including, but not limited to, direct and indirect costs, that the United States will incur in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, the costs

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incurred pursuant to Paragraph 57 (Site Access), Paragraph 45 (Emergency Response), and Paragraph 87 (Work Takeover).

f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

h. "Offsite Operable Unit" or "OOU" shall mean the Offsite Operable Unit described in Section 1.1.4 of the 1991 Record of Decision for the Advanced Micro Devices ("AMD"), TRW Microwave and Signetics (now Philips) Sites in Sunnyvale, California. The OOU is defined as a 100-acre area, down gradient and north of the Triple Site in an area bounded by the Sunnyvale East Drainage Channel on the west and Santa Paula Avenue on the east, and this Order applies to the area in the OOU that is inside the 5 micrograms per liter (ug/L) isopleth for Trichloroethene ("TCE") in shallow-zone groundwater, depicted generally on the map attached as Appendix B.

i. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

j. "Parties" shall mean EPA and Respondent.

k. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, the SOW, all appendices attached hereto and all documents incorporated by reference into this document including, without limitation, EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of the Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

l. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

m. "Respondent" shall mean Philips.

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "Triple Site" or "Site" shall mean the sites described in Sections 1.1.1, 1.1.2, and 1.1.3 of the 1991 Record of Decision: (1) the AMD Site located at 901/902 Thompson Place in Sunnyvale, California; (2) the TRW Microwave Site located at 825 Stewart Drive, in

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Sunnyvale, California; (3) and the Philips Site, formerly the Signetics Site, located at 811 East Arques Avenue in Sunnyvale, California. EPA has determined that the comingled plume of contaminants in the OOU originated from facilities at the AMD, TRW and Philips Sites.

p. "State" shall mean the State of California.

q. "Statement of Work" or "SOW" shall mean that May 1, 2014 "Work Plan: Additional Vapor Intrusion Evaluation" for the Offsite Operable Unit, as revised on January 7, 2015, and approved by EPA on January 12, 2015, as set forth in Appendix A to this Settlement Agreement. The Statement of Work is incorporated into this Settlement Agreement and is an enforceable part of this Settlement Agreement, as are any modifications made thereto in accordance with this Settlement Agreement.

r. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities Respondent is required to perform under the Statement of Work, pursuant to this Settlement Agreement, except those required by Section XIV (Retention of Records).

## V. FINDINGS OF FACT

12. The Advanced Micro Devices ("AMD") and TRW Sites were originally listed on the NPL following the discovery of contaminant releases to soil and groundwater from their facilities located in Sunnyvale, California. The Philips Site was proposed for listing in 1989 but was not listed because it was being regulated as a RCRA site at that time. The Philips Site is now a closed RCRA facility. Philips, AMD and Northrop Grumman Corp. ("Northrop") are responsible for the groundwater contamination at the OOU in the Triple Site that is caused by releases from the AMD, TRW or Philips Sites, primarily volatile organic compounds ("VOCs") such as trichloroethene ("TCE") and tetrachloroethylene ("PCE"), and associated vapor intrusion, at the OOU of the Triple Site.

13. In 1998, Philips and Northrop (then TRW, Inc.) entered into a contractual agreement regarding, among other matters, the investigation and remediation of the OOU. In that agreement, Philips and TRW agreed that, as between TRW and Philips, Philips would be responsible for conducting certain investigation and remediation activities in the OOU in exchange for TRW's financial contribution for same.

14. In 1999, Philips and AMD entered into an agreement to apportion cleanup costs between them for the past and future remediation of the OOU. Pursuant to these agreements, Philips will conduct the Work required by this AOC.

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15. AMD and Northrop are jointly and severally liable for the OOU and EPA reserves its right to issue an enforcement order against AMD and Northrop in the event Philips fails to conduct or complete the Work required by this Settlement Agreement.

16. Since 1985, the California Regional Water Quality Control Board San Francisco Bay Region ("Regional Board") had been the lead agency for overseeing cleanup activities at the Triple Site, pursuant to the South Bay Multi-Site Cooperative Agreement and South Bay Ground Water Contamination Enforcement Agreement entered into by the Regional Board and EPA in May 1985.

17. On December 3, 2013, EPA Region 9 issued to the Regional Board supplemental guidelines for evaluation of vapor intrusion to indoor air and short-term inhalation exposures for TCE at the Triple Site and other NPL Sites within the South San Francisco Bay Area. On December 19, 2013, EPA Region 9 issued additional technical comments specific to vapor intrusion evaluations at the Triple Site.

18. On July 9, 2014, EPA Region 9 issued a memorandum to EPA Region 9 Superfund Staff recommending response action levels to address near-term inhalation exposures to TCE in indoor air from subsurface vapor intrusion.

19. On August 4, 2014, the Regional Board transferred lead agency oversight responsibilities for the Triple Site to EPA Region 9.

20. EPA has taken the lead oversight for the Triple Site because EPA believes there is a sensitive population potentially at risk from vapor intrusion at the OOU. This includes a residential neighborhood north of Duane Avenue consisting of over 100 homes, an infant daycare and preschool, two elementary schools and one high school.

21. Indoor air sampling results collected from certain buildings in the OOU neighborhood, including data from as recent as 2012, show exceedances of current US EPA residential Regional Screening Levels ("RSL") for TCE.

22. Moreover, concurrent indoor air investigations at nearby South Bay Sites with similar depth to groundwater and TCE shallow-zone concentrations as the OOU, including the former source building of the TRW Site, show exceedances of both residential and commercial building RSLs.

23. EPA further alleges that the additional Vapor Intrusion Work Plan for the OOU submitted by Locus Technologies on May 1, 2014, on behalf of Philips did not adequately address EPA's sampling recommendations or other key guidelines to the Regional Board.

24. A revised Vapor Intrusion Work Plan for the OOU was submitted by Locus Technologies on January 7, 2015 (the "Work Plan").

25. The revised Work Plan was approved by EPA on January 12, 2015, and is incorporated with this Settlement Agreement as the Statement of Work (Appendix A).

## **VI. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, EPA has determined that:

26. The AMD, TRW and Philips Sites (collectively, the Triple Site) are a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. The VOCs at the Site, as identified in the Findings of Fact above, include “hazardous substances” as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

28. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. Respondent is a “person” as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

30. Respondent is a responsible party under Sections 104, 106, 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, and 9622.

31. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), and are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9607, and 9622(a).

32. Respondent is qualified to conduct the Statement of Work within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a), 107, and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a), 9607, and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

## **VII. SETTLEMENT AGREEMENT**

33. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

## **VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS**

34. Selection of Contractors, Personnel.

a. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Within thirty (30) days of the Effective Date of this Settlement Agreement, and before the Work outlined below begins, Respondent shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants and laboratories to be used in carrying out such Work. With respect

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to any proposed contractor, Respondent shall demonstrate that the proposed contractor has a quality system which complies with ANSIASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP") or its equivalent (such as a Quality Assurance Project Plan or QAPP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QNR-2)," (EPA/240/B-01/002, March 2001 or subsequently issued guidance) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements.

b. This Settlement Agreement is contingent on Respondent's demonstration to EPA's satisfaction that Respondent is qualified to perform properly and promptly the actions set forth in this Settlement Agreement. If EPA disapproves in writing of any person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacements within fourteen (14) days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct the Work and to seek reimbursement for costs and penalties from Respondent.

c. During the course of the Evaluation of Vapor Intrusion to Indoor Air, Respondent shall notify EPA in writing of any changes or additions in the personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification.

35. Within three (3) days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during the Work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within fourteen (14) days following EPA's disapproval. Respondent shall have the right to change its Project Coordinator, subject to EPA's right to disapprove. Respondent shall notify EPA five (5) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notification. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent. Documents to be submitted to the Respondent shall be sent to:

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Shau-Luen Barker  
Project Manager, Environmental Affairs  
Philips Semiconductors  
15313 W. 95th Street  
Lenexa, KS 66219  
[shauluen.barker@philips.com](mailto:shauluen.barker@philips.com)

With a copy to:  
Todd O. Maiden  
Reed Smith LLP  
101 Second Street, Suite 1800  
San Francisco, CA 94105  
[tmaiden@reedsmith.com](mailto:tmaiden@reedsmith.com)

36. EPA has designated Melanie Morash of Region IX's Superfund Division as its Remedial Project Manager ("RPM"). EPA will notify Respondent in writing of a change of its designated Remedial Project Manager. Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement as follows:

2 hard copies and 1 electronic copy to:

Melanie Morash  
Superfund Program, EPA Region IX  
75 Hawthorne Street (SFD-7-1)  
San Francisco, CA 94105  
[morash.melanie@epa.gov](mailto:morash.melanie@epa.gov)

Respondent shall also send 2 hard copies and 1 electronic copy of all work plans, reports, and other work related documents submitted to EPA to EPA's contractor:

Neil Hey  
CB&I Federal Services LLC  
4005 Port Chicago Highway, Suite 200  
Concord, CA 94520-1120  
[neil.hey@cbifederalservices.com](mailto:neil.hey@cbifederalservices.com)

37. EPA's RPM shall have the authority lawfully vested in an RPM by the NCP. In addition, EPA's RPM shall have the authority consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA RPM from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

38. EPA shall arrange for a qualified person to assist in its oversight and review of the Work, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have

the authority to observe Work and make inquiries in the absence of EPA, but not to modify the Work Plan.

## **IX. WORK TO BE PERFORMED**

39. Respondent shall conduct the Evaluation of Vapor Intrusion to Indoor Air in accordance with the provisions of this Settlement Agreement, the SOW, CERCLA, the NCP and EPA guidance documents.

40. a. Respondent has submitted and EPA has approved a Work Plan for the Evaluation of Vapor Intrusion to Indoor Air ("Work Plan") in accordance with the provisions of this Settlement Agreement and the SOW. The Work Plan comprises an evaluation of vapor intrusion to indoor air, and includes sampling of indoor air, crawlspace/basement air (where present in buildings), pathway air, and outdoor/ambient air at or near residential and commercial buildings in the neighborhoods in the OOU that overlie the 5 micrograms per liter TCE in shallow-zone groundwater part of the plume. The purpose of the evaluation shall be to determine the nature and extent of vapor intrusion and to evaluate the risk to human health in the residences and other buildings overlying the VOC contamination. The Work Plan also includes multiple rounds of indoor air sampling, including: 1) colder weather sampling at residential-type passively ventilated buildings; and 2) Heating, Ventilation and Air Conditioning (HVAC)-on and -off sampling at commercial-type buildings, including schools. Respondent shall implement such mitigation measures as EPA deems appropriate if a subsequent evaluation performed pursuant to Section 5.7.5 of the Work Plan determines that TCE vapor intrusion inside the occupied structure at issue has migrated from the underlying groundwater and exceeds EPA's short term TCE risk standard (as of the Effective Date) inside an occupied structure.

b. Schedule. Within seven (7) days of the Effective Date of this Settlement Agreement, Respondent shall submit a detailed schedule for submittal of all deliverables required under this Settlement Agreement, for review and approval by EPA.

### **41. Modification of the Work Plan.**

a. If at any time during the process of evaluating Vapor Intrusion to Indoor Air, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the need for additional data to the EPA RPM within fifteen (15) days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondent and whether it will be incorporated into plans, reports and other deliverables.

b. In the event of unanticipated or changed circumstances at the Site which prevent implementation of the Work Plan, Respondent shall notify the EPA RPM by telephone within twenty four (24) hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA may modify or amend the Work Plan in writing accordingly, in accordance with Paragraph 46, and where Respondent agrees to the modification, Respondent shall perform the Work Plan as modified or amended. Alternatively, EPA may notify Respondent and give Respondent the opportunity to modify the Work Plan in

accordance with Paragraph 46.

c. EPA may determine that in addition to tasks defined in the initially approved Work Plan, other additional actions may be necessary to accomplish the objectives of the Work. EPA may modify or amend the Work Plan in writing accordingly, in accordance with Paragraph 41. Otherwise, EPA shall notify Respondent and give Respondent the opportunity to modify the Work Plan in accordance with Paragraph 46.

d. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within seven (7) days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The SOW and/or the Work Plan shall be modified in accordance with the final resolution of the dispute.

e. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written supplement thereto. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions at the Site.

42. Off-Site Shipment of Waste Material. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an off-site waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to EPA's RPM.

a. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

43. Meetings. Respondent may make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the Work. In addition to

discussion of the technical aspects of the Work, topics may include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion. EPA will consult with Respondent on scheduling prior to announcing meeting dates to the public when feasible.

44. Reporting.

a. In addition to the plans, reports and other deliverables set forth in this Settlement Agreement and SOW, during field work Respondent shall provide to EPA monthly progress reports summarizing the work conducted that reporting period. Progress reports shall be submitted by electronic mail to the EPA RPM at [Morash.Melanie@epa.gov](mailto:Morash.Melanie@epa.gov) and to the EPA contractor at [neil.hey@cbifederalservices.com](mailto:neil.hey@cbifederalservices.com).

b. In addition to the above progress reports during field work, Respondent shall provide to EPA monthly progress reports by the tenth day of the following month. At a minimum, with respect to the preceding month, these progress reports shall:

- (1) describe the actions which have been taken to comply with this Settlement Agreement during that month;
- (2) include all results of validated sampling and tests and all other validated data received by Respondent;
- (3) describe Work planned for the next two months with schedules relating such Work to the overall project schedule; and
- (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

c. Final Report: Within forty five (45) days after Respondent's review of validated analytical data from the final round of indoor air sampling, Respondent shall submit a draft report summarizing the evaluation of vapor intrusion to indoor air and other related actions taken to comply with this Agreement (the "Report") which will be submitted and drafted in accordance with the SOW.

Respondent will revise this Report in accordance with EPA comments and submit a final report for EPA review and approval within thirty (30) days after receipt of EPA comments. The final Report, if one is required, shall include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

45. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also as soon as possible notify the EPA RPM or, in the event of his/her unavailability, the Regional Duty Officer at (800) 300-2193 or (415) 947-4400, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVIII (Payment of Response Costs).

b. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall as soon as possible notify the EPA RPM, the OSC or Regional Duty Officer at (800) 300-2193 or (415) 947-4400 and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, et seq.

**X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

46. a. Any requirement of this Settlement Agreement or the Work Plan may be modified in writing by mutual agreement of the parties.

b. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Settlement Agreement, in a notice to Respondent EPA shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) propose to modify the submission to cure the deficiencies; (4) disapprove, in whole or in part, the submission, directing that Respondent modify the submission; or (5) any combination of the above. However, EPA shall not propose to modify a submission without first providing Respondent at least one notice of deficiency and an opportunity to cure within thirty (30) days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects.

c. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from EPA.

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47. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraph 41(a), (b), (c) or (e), Respondent shall proceed to take any action required by the plan, report or other deliverable, as approved or modified by EPA. Respondent may invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

48. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI, shall accrue during the thirty (30)-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 46.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Penalties).

c. Respondent shall not proceed further with any subsequent activities or tasks until receiving EPA written approval, approval on condition or modification of the following deliverables: Evaluation of Vapor Intrusion to Indoor Air Work Plan, Sampling and Analysis Plan, and Quality Assurance Project Plan. While awaiting EPA approval, approval on condition or modification of these deliverables, Respondent shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth under this Settlement Agreement.

d. For all remaining deliverables not listed above in Paragraph 48(c), Respondent shall proceed with all subsequent tasks, activities and deliverables without awaiting EPA approval on the submitted deliverable. EPA reserves the right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during the Work Plan.

49. If EPA disapproves a resubmitted plan, report or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

50. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA due to a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invoke the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by

EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

51. In the event that EPA takes over some of the tasks, but not the preparation of the Report, Respondent shall incorporate and integrate information supplied by EPA into the final Report.

52. All plans, reports and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

53. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Whether or not EPA gives express approval for Respondent's deliverables, Respondent is responsible for preparing deliverables acceptable to EPA.

## **XI. QUALITY ASSURANCE, SAMPLING AND ACCESS TO INFORMATION**

54. Quality Assurance.

a. Respondent shall assure that Work performed, samples taken and analyses conducted conform to the requirements of the SOW, the QAPP and guidance identified therein. Respondent will assure that field personnel used by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories which have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA.

b. Respondent shall follow, as appropriate, "Guidance for Quality Assurance Project Plans," (EPA QA/G-5, EPA/240/R-02/009), EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5, EPA/240/B-01/003), U.S. EPA Environmental Response Team Standard Operating Procedures (SOP): 2015, "Indoor Air Assessment, Sampling and Monitoring Guidelines," and Standard Operating Procedure (SOP): 2012, "Soil Sampling," as guidance for QA/QC and sampling. Respondent and any laboratories used for the Work should have a documented Quality System that complies with ANSI/ISO/ASQ E-14001-2004 "Quality Systems for Environmental Data and Technology Programs -Requirements with Guidance for Use" (American National Standard Institute 2004, January 10, 2005), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent

documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

55. Sampling.

a. All results of sampling, tests, modeling or validated data (including raw data, as consistent with the Work Plan) generated by Respondent, or on Respondent's behalf, during the period that this Settlement Agreement is effective, shall be submitted to EPA in the next monthly progress report as described in Paragraph 44 of this Settlement Agreement. EPA will make available to Respondent validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall endeavor to verbally notify EPA at least seven (7) days, and in no event fewer than three (3) days, prior to conducting significant field events as described in the SOW, the Work Plan, or Sampling and Analysis Plan. At EPA's verbal or written request, or the request of EPA's oversight contractor, Respondent shall allow split, duplicate or co-located samples (together, split samples) to be taken by EPA and its authorized representatives of any samples collected in implementing this Settlement Agreement. All split samples of Respondent's shall be analyzed by the methods identified in the QAPP.

56. Access to Information.

a. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the Work or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Upon reasonable notice to Respondent, Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent asserts business confidentiality claims.

c. Respondent may assert that certain documents, records and other



information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following:

- (1) the title of the document, record, or information;
- (2) the date of the document, record, or information;
- (3) the name and title of the author of the document, record, or information;
- (4) the name and title of each addressee and recipient;
- (5) a description of the contents of the document, record, or information; and
- (6) the privilege asserted by Respondent.

However, no documents, record, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

- d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

57. In entering into this Order, Respondent waives any objections to any data gathered, generated, or evaluated by EPA, the State or Respondent in the performance or oversight of the Work that has been verified according to the quality assurance / quality control ("QA/QC") procedures required by the Order or any EPA-approved RI/FS Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the RI/FS, Respondent shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within fifteen (15) days of the monthly progress report containing the data.

## **XII. SITE ACCESS**

58. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, and where Respondent is taking the lead in securing access, Respondent shall use its best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, if directed to do so or as otherwise specified in writing by the EPA RPM. Where EPA takes the lead in securing access, Respondent will cooperate with EPA in conducting outreach and obtaining signed access agreements from property owners. Where Respondent takes the lead in obtaining access agreements, Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. If Respondent cannot obtain access agreements, EPA may either: (i) obtain access for

Respondent or assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate; (ii) perform those tasks or activities with EPA contractors; or (iii) terminate the Settlement Agreement. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and shall reimburse EPA for agreed upon costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

59. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

### **XIII. COMPLIANCE WITH OTHER LAWS**

60. Respondent shall comply with all applicable local, state and federal laws and regulations when performing the Work in the SOW. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-Site, including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work is to be conducted off-Site and requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

### **XIV. RETENTION OF RECORDS**

61. During the pendency of this Settlement Agreement and until ten (10) years after commencement of the Work, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form but excluding backup tapes typically used for recovery of data in the event of a disaster now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Respondents shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature or description relating to performance of the Work until ten (10) years after commencement of the Work.

62. At the conclusion of this document retention period, Respondent shall notify EPA at least ninety (90) days prior to the destruction of any such documents, records or other information, and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized

by federal law. If a dispute regarding the Work occurs and Respondent has asserted such a privilege, it shall provide EPA with the following:

- (a) the title of the document, record, or other information;
- (b) the date of the document, record, or other information;
- (c) the name and title of the author of the document, record, or other information;
- (d) the name and title of each addressee and recipient;
- (e) a description of the subject of the document, record, or other information; and
- (f) the privilege asserted by Respondent.

However, no documents, records or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

63. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XV. DISPUTE RESOLUTION**

64. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

65. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within thirty (30) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have one hundred twenty (120) days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

66. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, EPA's Director of the Superfund Division will issue a written decision. EPA's decision shall be incorporated into and become an enforceable part of this Settlement

Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

## **XVI. STIPULATED PENALTIES**

67. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraph 66 for failure to comply with any of the requirements of this Settlement Agreement specified below unless excused under Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the Work under this Settlement Agreement or any activities contemplated under any Work Plan or other plan approved under this Settlement Agreement identified below, in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

68. Stipulated Penalty Amounts.

a. Stipulated Penalty Amounts - Work

The following stipulated penalties shall accrue per day for any noncompliance of: 1) failure to perform indoor air sampling 2) failure to perform mitigation measures as required by EPA.

<u>Penalty for Violation Per day</u>	<u>Period of Noncompliance;</u>
\$ 1,000.00	1 <sup>st</sup> through 14 <sup>th</sup> day
\$ 1,500.00	15 <sup>th</sup> through 30 <sup>th</sup> day
\$ 2,000.00	31st day and beyond

b. The following stipulated penalties shall accrue per day for any noncompliance identified in Paragraph 66(b), including failure to submit timely or adequate reports or other written documents pursuant to Paragraph 66(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 700.00	1st through 14th day
\$ 1,400.00	15th through 30th day
\$ 2,500.00	31st day and beyond

c. Compliance Milestones

(1) Submittal of Final Evaluation of Vapor Intrusion to Indoor Air Report

69. In the event that EPA assumes performance the Work pursuant to Paragraph 89 of Section XX ("Reservation of Rights by EPA"), Respondent shall be liable for a stipulated penalty in the amount of one hundred thousand dollars (\$100,000), unless otherwise resolved through Section XV (Dispute Resolution).

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the EPA Management Official designated in Paragraph 64 of Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

71. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the same and describe the noncompliance. EPA may send Respondent's written demand for the payment of the penalties. However, penalties shall accrue as provided in Paragraph 66 regardless of whether EPA has notified Respondent of a violation.

72. All penalties accruing under this Section shall be due and payable to EPA within thirty (30) days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-1000

At the time of payment, Respondent shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 0994, the EPA Docket Number for this action, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s) shall be sent to EPA to:

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Triple Site Superfund Site, Offsite Operable Unit

Melanie Morash, Remedial Project Manager  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (SFD-6-2)  
San Francisco, CA 94105

73. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

74. Penalties shall continue to accrue as provided in Paragraph 66 during any dispute resolution period, but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision.

75. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 70.

76. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 122(1) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 87.

## **XVII. FORCE MAJEURE**

77. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, *force majeure* is defined as any event arising from causes beyond the control of Respondents or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

78. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within forty eight (48) hours of when Respondent first knew that the event might cause a delay. Within seven (7) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated

duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

79. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

### **XVIII. REIMBURSEMENT OF RESPONSE COSTS**

80. Reimbursement of Response Costs.

a. Respondent shall reimburse EPA, on written demand, for all Response Costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Settlement Agreement. On a periodic basis but not less frequently than annually, EPA will send Respondent a bill requiring payment that includes EPA's certified Agency Financial Management System summary data (SCORES Reports), or such other summary as certified by EPA. Respondent shall make all payments within sixty (60) days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 80 of this Settlement Agreement. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment and EPA Site/Spill ID number A974. Respondent shall send the check(s) to:

U.S. EPA Hazardous Substance Superfund  
U.S. Bank  
Government Lockbox 979076  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
Attn: Box 979076  
St. Louis, MO 63101

Email: [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov)

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Alternatively, Respondent may make payments required by this Paragraph by wire transfer, and shall be accompanied by a statement identifying the name and address of the party making payment, the OOU, and the name of the Triple Site, the EPA Region (Region 9), Site/Spill ID Number A974, and the EPA docket number for this action.

Wire transfers should be directed to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT Address: FRNYUS33  
33 Liberty Street  
New York NY 10045

Field Tag 4200 of the Fedwire message should read as follows:  
"D 68010727 Environmental Protection Agency"

b. At the time of payment, Respondent shall send notice that payment has been made to:

Melanie Morash, Remedial Project Manager  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (SFD-7)  
San Francisco, CA 94105

81. The total amount to be paid by Respondent pursuant to Paragraph 78(a) shall be deposited in the Triple Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, if all other Site related Response.

82. If Respondent does not pay Response Costs within sixty (60) days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Response Costs. The Interest on unpaid Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required by this Paragraph in the manner described in Paragraphs 78 and 79.

83. Respondent may contest payment of any Response Costs under Paragraph 78 if it determines that EPA has made an accounting error or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be



made in writing within sixty (60) days of receipt of the bill and must be sent to the EPA RPM. Any such objection shall specifically identify the contested Response Costs and the basis for objection. In the event of an objection, Respondents shall within the sixty (60) day period pay all uncontested Response Costs to EPA in the manner described in Paragraphs 78 and 79. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of California and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution).

84. If EPA prevails in the dispute, within five (5) business days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraphs 78 and 79. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraphs 78 and 79. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Response Costs.

#### **XIX. COVENANT NOT TO SUE BY EPA**

85. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondent and does not extend to any other person.

#### **XX. RESERVATIONS OF RIGHTS BY EPA**

86. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other

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legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

87. EPA also reserves all of its legal and equitable rights against AMD and Northrop, including but not limited to the right to issue an Administrative Order to these parties for performance of the Work at the OOU.

88. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

**89. Work Takeover.**

a. In the event EPA determines that Respondent has: (i) ceased implementation of any portion of the Work, or (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary.

b. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered future Response Costs that Respondents shall pay pursuant to Section 78 (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXI. COVENANT NOT TO SUE BY RESPONDENT**

90. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work for which the Response Costs have or will be incurred, including any claim under the United States Constitution, the California State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Response Costs.

91. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 86 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

92. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

## **XXII. OTHER CLAIMS**

93. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

94. Except as expressly provided in Section XXI (Covenant Not To Sue By Respondent) and Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

95. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

### **XXIII. CONTRIBUTION**

96. a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Response Costs.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B) pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

### **XXIV. INDEMNIFICATION**

97. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of negligent or other wrongful acts or omissions of Respondents, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys’ fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

98. The United States shall give Respondent written notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

99. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site.

## **XXV. INSURANCE**

100. At least fifteen (15) days prior to commencing any On-Site Work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of two million dollars (\$2,000,000), combined single limit, naming the EPA as an additional insured. Within the same period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent needs to provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

## **XXVI. FINANCIAL ASSURANCE**

101. Within sixty (60) days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of one million dollars (\$1,000,000) in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;

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d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondent, or by one or more unrelated corporations that have a substantial business relationship with Respondent, including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. § 264.143(f); and/or

f. a demonstration by Respondent that it meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the estimated cost of the Work as noted above (plus the amount(s) of any other federal or any State environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction.

102. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 99, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

103. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Paragraphs 99(e) or 99(f) of this Settlement Agreement, Respondent shall: (i) demonstrate to EPA's reasonable satisfaction that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. § 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of seven hundred fifty thousand dollars (\$750,000) for the Work at the Site shall be used in relevant financial test calculations.

104. The commencement of any Work Takeover pursuant to Paragraph 87 of this Settlement Agreement shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 99(a) through f, and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the

Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 99(e), Respondent shall immediately upon written demand from EPA deposit into a special account within the Hazardous Waste Superfund or into such other account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

105. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 99 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

106. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

## **XXVII. INTEGRATION/APPENDICES**

107. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, and reports (other than progress reports) that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: (i) "Appendix A" is the SOW and (ii) "Appendix B" is the map of the OOU.

## **XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

108. This Settlement Agreement shall be effective on the date it is signed by EPA.

109. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA RPMs do not have the authority to sign amendments to the Settlement Agreement.

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110. No informal advice, guidance, suggestion, or comment by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

### XXIX. NOTICE OF COMPLETION OF WORK

111. When EPA reasonably determines that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to payment of Response Costs and Record Retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Statement of Work if appropriate in order to correct such deficiencies, in accordance with Paragraph 41 (Modification of the Work Plan). Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

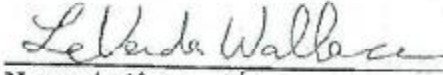
### XXX. TERMINATION

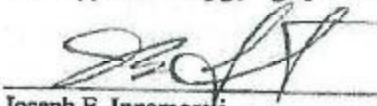
112. This Settlement Agreement shall terminate upon EPA's issuance of the Notice of Completion of Work, or June 30, 2016, whichever occurs first.

For the United States Environmental Protection Agency, Region IX

  
John Lyons  
Acting Assistant Director, Superfund Division  
U.S. Environmental Protection Agency  
Region 9  
Date: March 4, 2015

For Phillips Semiconductors, Inc.

  
Name: LEVONDA WALLACE  
Title: AUTHORIZED SIGNATORY  
Date: February 27, 2015

  
Joseph E. Innamorati  
Vice President  
Date: February 27, 2015



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## APPENDIX A

### “STATEMENT OF WORK”

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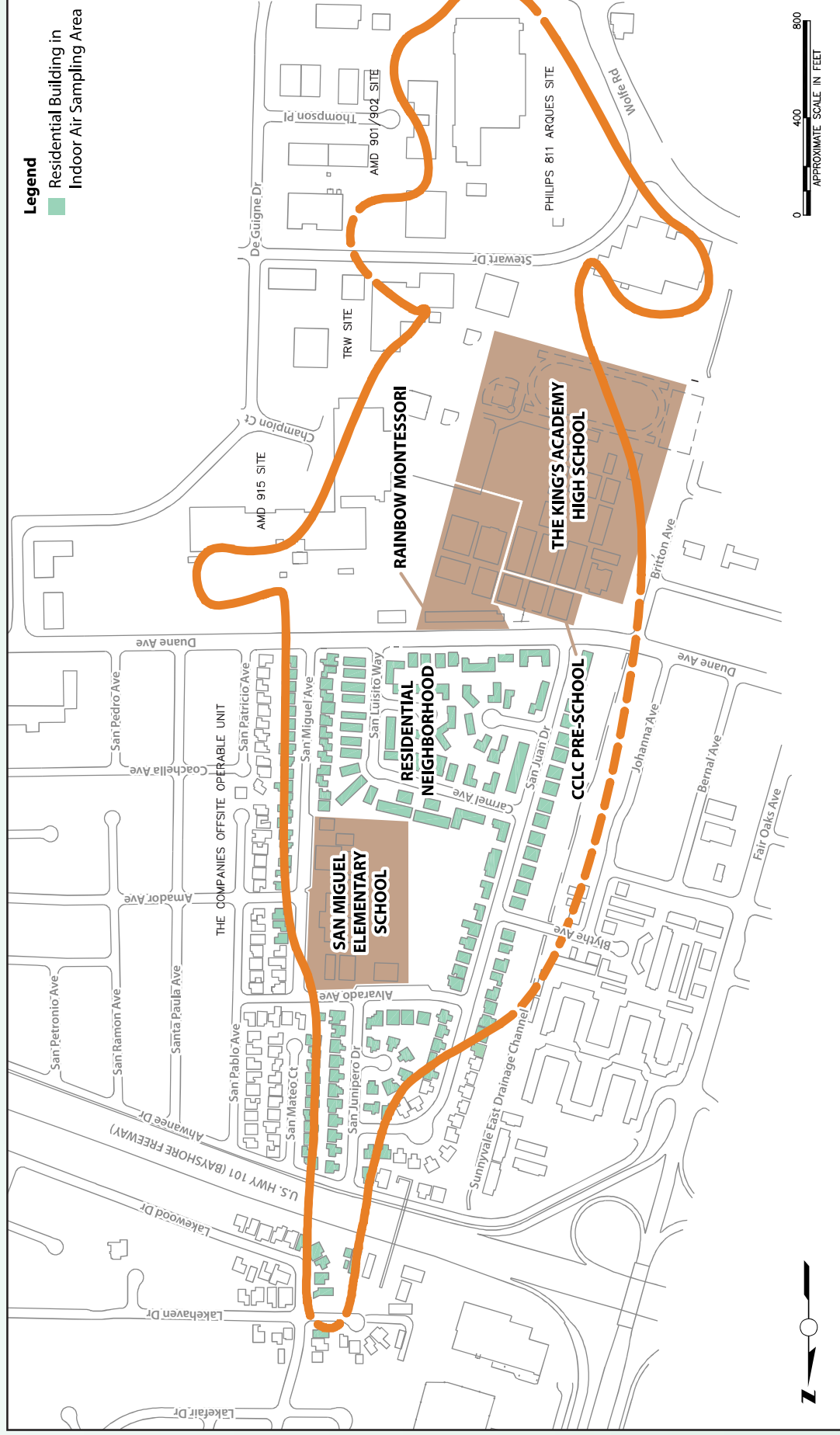
## APPENDIX B

“MAP”



# Triple Site

Sunnyvale, California • December 2014



Indoor air sampling area and approximate extent of TCE contamination in shallow groundwater